

1 Thomas A. Connelly (AZ Bar #019430)
2 Robert T. Mills (AZ Bar #018853)
3 Sean A. Woods (AZ Bar #028930)
4 **MILLS + WOODS LAW PLLC**
5 5055 North 12th Street, Suite 101
6 Phoenix, Arizona 85014
7 Telephone 480.999.4556
8 docket@millsandwoods.com

9 DeeAn Gillespie Strub (AZ Bar #009987)
10 Jenny D. Jansch (AZ Bar #024431)
11 **GILLESPIE, SHIELDS & TAYLOR**
12 7319 North 16th Street
13 Phoenix, Arizona 85020
14 Telephone: (602) 870-9700
15 Fax: (602) 870-9783
16 mailroom@gillaw.com
17 *Attorneys for Plaintiffs*

18
19
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22
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25
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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Jessica Kahraman, *et al.*,
Plaintiffs,
v.

State of Arizona, *et al.*,
Defendants.

Case No.: 2:22-cv-00375-PHX-SRB

**PLAINTIFFS' CONTROVERTING
STATEMENT OF FACTS IN SUPPORT
OF RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

(Hon. Susan R. Bolton)

Pursuant to LRCiv 56.1 and Rule 56 (b)(1)(2) of Fed.R.Civ., Plaintiffs' submit this controverting statement of facts in support of their Response in Opposition to Defendants' Motion for Summary Judgment.

I. RESPONSE TO DEFENDANT'S SEPARATE STATEMENT OF FACTS

1. Disputed. Kenan ("KK") was medically cleared for discharge on 1/3/2019. DCS did not have a Placement for KK and left him at Banner for 3 additional days in violation of ARS §8-514. See Exhibits A, B and C at 134:22-142:2. KK was hospitalized due to exposure to toxic mold. See Exhibit D.

2. Disputed. The diagnosis of malnutrition is inaccurate or misleading. KK and DK were in regular contact with their treating physicians and had weekly therapies with AZ DDD workers – all mandated reporters. Not one ever made a hotline report to DCS.

See Exhibit C 133:1-134:21.

3. Disputed in part. The diagnoses of malnutrition and failure to thrive are not based on sound medical practice. **See Exhibit E at 132:11-136:7; see also Exhibit L at 4-23, 30-43.**

4. Not Disputed.

5. Disputed. Exposure to toxic mold was the cause of KK's medical conditions. **See Exhibit D, E at 132:11-136:7, F and P.** The children's pediatrician, PCH physicians, and DDD workers knew the children were on the GAPS diet and never made a finding of malnutrition or made a hotline report. **See Exhibit C at 133:1-134:21; Exhibit F.** The children had been on the GAPS diet for over 2 years with no adverse side effects or concerns for malnutrition. **See Exhibit G at 4-9; Exhibits Y, Z.** When removed from the mold infested environments their symptoms improved. **See Exhibit P.**

6. Disputed. Dr. Stewart and Banner did not review or speak with KK's treating physicians or conduct further testing to find the root cause of KK's medical maladies. **Exhibit L at 4-23, 30-43.** Once Dr. Stewart found a diagnosis that *could* explain the symptoms, Banner and DCS stopped looking for other causes. **See Exhibit E 30:10-21; 117:17-119:22; 132:11-136:7 and L at 4-23, 30-43.**

7. Not Disputed.

8. Disputed in part. Dr. Stewart and Banner ignored the fact that Mother, maternal grandparents and Father communicated about feeding the KK more food and that he ate 2100-2500 calories a day. **See Exhibits G at 4-9,11 and H, and L at 4-23, 30-43, and Q at 5-6.** Dr. Miga told Mother that Banner nutritionists would help her broaden KK's diet, but they never did. **See Exhibit O ¶ 4.**

1 9. Disputed. The meaning of this paragraph is unclear. DK and KK's DDD
2 workers witnessed the children's reactions to food. **Exhibit G at 14-15.** After 2 DDD
3 witnesses informed DCS of this fact, Kramer refused to interview additional witnesses
4 because their testimony did not fit their malnutrition narrative. **Exhibit C at 33: 14-41:1**
5 **and L at 4-23, 30-43, and Q at 5-6.**

6 10. Disputed in part. Kramer had a duty under ARS § 8-456 to conduct a complete
7 and thorough investigation which would support *or refute the allegations of abuse or*
8 *neglect.* Kramer admits she did not contact KK's treating physicians or other collateral
9 contacts during her abbreviated investigation. **See Exhibit I, Exhibit C at 33:14-41:1,**
10 **Exhibit Q at 5-6, 9.**

11 11. Disputed. As evident from the CSRA, Mother did not object to the hospital
12 treating KK, nor with having DK examined by the hospital. **See Exhibit H.**

13 12. Disputed. KK had medical maladies due to living in a mold infested
14 environment. Neither Dr. Stewart, Banner, nor Kramer thoroughly investigated this matter.
15 **See Exhibit H; Exhibit C at 33:14-41:1; Exhibit L at 4-23, 30-43; Exhibit Q at 5-6, 9;**
16 **Exhibit AH.**

17 13. Not Disputed.

18 14. Disputed in part. Kramer arranged for Banner security personnel and Mesa
19 Police Officers to forcibly remove Mother and Father from the hospital while KK watched
20 in horror. Kramer then prohibited their return. **See Exhibit O ¶ 6.**

21 15. Disputed in part. The accuracy of the information contained in the document is
22 disputed. **See Exhibit L at 1-23, 30-43; Exhibit Q at 5-6, 9, 13-14.**

23 16. Disputed. DK was examined but not hospitalized. **See Exhibit Q at 5-6.**

24 17. Not disputed.

25 18. Not disputed.

26 19. Disputed in part. Parents sought the advice of an advocacy group and were
27 advised not to attend the TDM or cooperate with DCS. **See Exhibit O ¶ 7.**
28

1 20. Disputed. KK and DK's DDD providers, Dr. McCants, and other treating
2 physicians agreed that the children needed wheelchairs. **See Exhibits J, K, L at 11-23, 30-**
3 **43; Exhibit Q at 6, 9, 13-14.**

4 21. Disputed in part. The court did not have all the information available when the
5 order was issued due to Sarah Kramer's failure to comply with ARS § 8-456. **Exhibit C at**
6 **33:14-41:1; Exhibit Q at 6, 9, 13-14.**

7 22. Disputed in part. These boiler-plate findings and orders are made in almost
8 every Dependency proceeding for Title IV-E funding purposes. **See Exhibit S.**

9 23. Disputed in part. Due to Kramer's violation of ARS § 8-456, the accuracy of
10 the information in the report is disputed. **Exhibit C at 33:14-41:1; Exhibit L at 14, 30-**
11 **43, 64; Exhibit Q at 5-9, 13-14.**

12 24. Disputed in part. Pursuant to DCS policy and procedure, a DCS Investigator
13 must complete a thorough investigation. The children's condition improved when they
14 were no longer exposed to toxic mold. **Exhibit C at 33:14-41:1; Exhibit L at 14, 30-43,**
15 **64; Exhibit Q at 5-9, 13-14.**

16 25. Disputed in part. **See Paragraph 22.**

17 26. Disputed. Kramer violated ARS §§ 8-415 and 8-456. **See Exhibit C at 32:20-**
18 **41:24; Exhibit L at 14, 30-43, 64; Exhibit Q at 9, 13-14.**

19 27. Disputed. DCS case managers must continually reassess whether the children
20 are in danger and update the CSRA when additional information arises. **See Exhibit L at**
21 **44- 64; Exhibit Q at 5-11, 13-14.**

22 28. Disputed in part. Bell did not perform all her duties with accuracy and honesty.
23 **See Exhibit L at 44-64.**

24 29. Disputed in part. Madison Bell did not provide the AAG's with complete and
25 accurate information. **See Exhibit L at 44-64.**

1 30. Disputed in part. The court makes its decisions with the information provided.
2 It is disputed that Bell provided complete and accurate information to the court. **See Exhibit**
3 **L at 44-64.**

4 31. Disputed in part. Not all of the “independent parties” have all the information
5 available to protect the children’s best interests. **See Exhibit L at 44-64.**

6 32. Not Disputed.

7 33. Disputed in part. The children improved because they were removed from
8 exposure to toxic mold. **See Exhibit L; Exhibit Q at 5-11, 13-14; Exhibit R at 9-12.**

9 34. Not Disputed. Objection Relevance.

10 35. Not Disputed. Objection Relevance.

11 36. Not Disputed. Objection Relevance.

12 37. Not Disputed. Objection Relevance.

13 38. Not Disputed. Objection Relevance.

14 39. Not Disputed.

15 40. Not Disputed.

16 41. Not Disputed.

17 42. Not Disputed.

18 43. Not Disputed.

19 44. Disputed in part. Dr. Carter is not a mold specialist and did not have the requisite
20 medical or scientific knowledge to make this recommendation. **Exhibit E at 132:11-136:7;**
21 **Exhibit R at 9-12; Exhibit AI.**

22 45. Not Disputed.

23 46. Disputed in part. The accuracy of the information given to Dr. Kelly and the
24 contents and recommendations in his report are disputed. **Exhibit L at 45, 56-64; Exhibit**
25 **Q at 5-11, 13-14.**

1 47. Disputed in part. Neither CASA nor Bell informed parents or the court that
2 CASA offered to take placement of KK and DK due to neglect by the foster placement. **See**
3 **Exhibit N at AZ KAHRAMAN 000016-17.**

4 48. Disputed in part. As late as September 2020, Bell and Temple continued to
5 assert this was an FDIA case and refused to reunify the children with Mother until she
6 completed the ACCEPTS model, including satisfying their subjective opinions about
7 whether Mother had taken “sufficient responsibility” for her actions. The ACCEPTS model
8 is designed for therapeutic use for perpetrators of abuse formally diagnosed with DSM-5
9 FDIA. **See Exhibit Q at 5-11, 13-14; Exhibit T; Exhibit U; Exhibit AQ; Exhibit BC.**

10 49. Not Disputed.

11 50. Disputed in part. DCS removed allegations of medical abuse from the
12 Dependency Petition. **See Defense Exhibits 246, 247.**

13 51. Not Disputed.

14 52. Disputed in part. **See Paragraph 22.**

15 53. Not Disputed.

16 54. Disputed in part. **See Paragraph 22.**

17 55. Not disputed.

18 56. Disputed in part. Dr. Newberger’s report was highly critical of Dr. Stewart,
19 Banner, and DCS, specifically Kramer and Bell. **See Exhibit L.** By objecting, DCS ensured
20 the juvenile court did not receive all the evidence in support of the children’s best interests.

21 57. Not Disputed.

22 58. Disputed in part. Pursuant to *Hays v. Gama*, 205 Ariz. 99 (Ariz. 2003) and
23 *James A. v. Dep’t of Child Safety*, 418 P.3d 1092 (Ariz. Ct. App. 2018), the best interests
24 of the children are paramount and sanctioning a party by precluding evidence must be
25 weighed against this interest. Dr. Newberger is considered the “Father of child abuse
26
27
28

1 detection”¹ and his opinion of KK’s and DK’s illness was contrary to that of DCS. *See*
 2 **Exhibits L; Exhibit BH at 19:5-23:2.**

3 59. Not Disputed.

4 60. Not Disputed.

5 61. Disputed in part that the court had the complete and accurate evidence available
 6 given DCS’s failure to complete a thorough investigation, and DCS’s failure to provide all
 7 the evidence to the court including, blocking Dr. Newberger from testifying.² **See Exhibit**
 8 **C at 33:14-41:1; Exhibit L; Exhibit M; Exhibit N; Exhibit Q at 5-11, 13-14; Exhibit R**
 9 **at 9-12.**

10 62. Disputed in part. *See Paragraph 22.*

11 63. Disputed in part. *See Paragraph 61.*

12 64. Disputed in part. *See Paragraph 61*

13 65. Disputed in part. *See Paragraph 61.*

14 66. Disputed in part. *See Paragraph 61.*

15 67. Disputed in part. *See Paragraph 61.*

16 68. Disputed in part. *See Paragraph 61.*

17 69. Disputed in part. *See Paragraph 61.*

18 70. Disputed in part. *See Paragraph 61.*

19 71. Disputed in part. *See Paragraph 61.*

20 72. Disputed in part. *See Paragraph 61.*

21 73. Not Disputed.

22 74. Disputed in part. *See Paragraph 61.*

23 75. Disputed in part. *See Paragraph 61.*

25 ¹ Dr. Newberger was the preeminent witness on behalf of Maya Kowalski and her family
 26 in the well-known “Take Care of Maya” case documented on Netflix. The jury awarded
 \$200 million against John Hopkins’ Hospital.

27 ² Plaintiff is not trying to “appeal” or have a “redo” of the hearing. Some of Plaintiffs’
 28 claims are based on the premise that DCS purposefully and knowingly did not provide the
 court with fully complete and accurate information.

1 76. Not Disputed.

2 77. Disputed in part. The court never made a ruling on the merits after hearing
3 testimony from Dr. Schroeckenstein and Dr. Newberger. **See Exhibit BH at 72:11-15; see**
4 **also Exhibit AV at 5.** Madison Bell and DCS dismissed the Dependency before the court
5 could rule on the merits of the case. **See Exhibits AV, BF, BG, BH.**

6 78. Not Disputed, but the juvenile court never made a ruling on Mother's motion
7 for change in physical custody before the dependency was dismissed on the State's motion.
8 **See Exhibit BE; Exhibit BH; see also Exhibit AV at 5; see also Paragraph 99 below.**

9 79. Not Disputed.

10 80. Not Disputed.

11 81. Disputed. Bell violated Mother's and the children's due process rights
12 throughout the case, withheld evidence from Mother and the court, and placed unreasonable
13 restrictions on Mother's ability to make decisions for her children and to reunify with them.
14 **See Exhibits L, M, N, Q at 5-11, 13-14, and R at 9-12.**

15 82. Not Disputed.

16 83. Disputed in part. Disputed that the information and recommendations therein
17 were based on complete and accurate evidence. **See Exhibits L, R.**

18 84. Disputed in part. The court must have complete and accurate information which
19 DCS and Bell prevented. **See Exhibits L, R**

20 85. Disputed in part. **See Paragraph 22.**

21 86. Disputed in part. Mother agreed to cooperate with Dr. Kelly on the condition
22 that her attorney be present. Dr. Kelly refused to allow it. **See Exhibits L, O ¶ 18.**

23 87. Disputed. Temple and Bell still needed to close the case and file specific records
24 with the Family court as ordered by the juvenile court. **See Exhibit AV.**

25 88. Disputed. Temple ratified, approved, and agreed with Bell's actions and
26 decisions. These actions were contrary to the best interests of the children and violated state
27 and federal law. **See Exhibits T, U.**

1 **II. ADDITIONAL FACTS THAT ESTABLISH A GENUINE ISSUE OF**
 2 **MATERIAL FACT**

3 89. Madison Bell specifically asked to be assigned to this case as it was a FDIA
 4 case. **See Exhibit W.**

5 90. Bell and Temple refused to believe any other narrative even when evidence
 6 pointed to other causes for the boys' medical symptoms and no psychologist ever diagnosed
 7 Mother with MBP/FDIA. **See Exhibit P; Exhibits AA, AB³, AC, AM, AP, AT.**

8 91. Bell often misconstrued or twisted the words of Mother and other providers
 9 including Mother's counselor, Dr. Rodriguez. **See Exhibits O ¶ 17, AJ, AK.** At times Bell
 10 outright lied.⁴ **See Exhibit AL.** Bell and Temple ignored Mother's and Dr. Newberger's
 11 warnings about Father's alcohol consumption and domestic violence. **See Exhibit O ¶¶**
 12 **20, 22; Exhibit L at 44-51.**

13 92. Bell insisted that Mother was manipulative and was lying to doctors and DCS
 14 providers and that only she, Bell, could see the truth. **See Exhibit AU.**

15 93. Dr. Kelly was DCS's hired gun for FDIA/medical abuse cases. **See Exhibits**
 16 **AD, AC at 73:18-75:10.** He was an out-of-state provider with a lucrative contract to help
 17 DCS and the State diagnose and prosecute parents. **See Exhibit AE.** He was paid \$33,800
 18 for his report on Mother alone. In comparison, DCS paid Dr. Oakley \$1,800 for 2
 19 psychological evaluations and Dr. Rodriguez \$7,525 for more than one year of therapy with
 20 Mother. **See Exhibit AF; Exhibit AR; Exhibit AS.**

21 94. At \$103,500 received from DCS, SWHD was the highest paid provider by
 22 for almost two years of therapeutic visitation services to the family. **See Exhibit AG.**

23 95. Mother worked with DCS's assigned therapist, Dr. Rodriguez, and met her
 24 treatment goals in August 2019; then Bell changed those goals in September 2019
 25

26 _____
 27 ³ Dr. Oakley is a DCS contracted provider and was given documents and questions to
 28 answer straight from DCS.

⁴ On 3/17/2020 – Bell agreed with Father to sever Mother's parental rights, yet she told
 Jessica and SWHD on 3/31/2020 that they were working towards family reunification.

1 preventing the children from returning home. **See Exhibits AN, AO, and AT.** DCS paid
2 Dr. Rodriguez \$7,525 total for providing a year of counseling to Mother. **See Exhibit AS.**

3 96. Later, Bell and SWHD implemented a third set of goals based on the
4 ACCEPTS model which was specifically created and designed for parents diagnosed with
5 FDIA. **See Exhibits AP, AQ.**

6 97. Bell, Temple and SWHD ignored their own providers who stated that Mother
7 should be allowed to bring food during her visits with the children and did not have FDIA.
8 **See Exhibits AA, AB, BD.**

9 98. On January 6, 2020, AAG Martncik avowed to the court that Bell would
10 arrange for Father to undergo alcohol testing to ensure the children were safe returning to
11 his care. Bell never arranged for the testing. **See Exhibit BJ at 34:3-16.**

12 99. After the Dependency was dismissed, jurisdiction transferred to the Family
13 court. **See Exhibit AV.** The juvenile court ordered DCS to provide the family court several
14 documents including DCS's last report to the court and Mother's objection to that report.
15 **See id.** The juvenile court did not make any rulings from the September 15, 2020,
16 evidentiary hearing on Mother's change of custody motion where Drs. Schroeckenstein and
17 Newberger testified, or on Mother's motion to find Bell in contempt, finding "all
18 outstanding Motions are moot...." **Id. at 5.**

19 100. On January 7, 2021 (less than two months after the Dependency dismissal)
20 the Family court ordered that Mother have unsupervised parenting time, including
21 overnights with the children. **See Exhibits O ¶ 39, AW**

22 101. In open court on May 25, 2021, Mother and Father entered into a binding
23 Rule 69 Agreement dissolving the parents' marriage and granting joint legal decision-
24 making with Mother having final decision-making in case the parties' disagreed. The
25 parties had equal parenting time. **See Exhibit AX.** Almost immediately Father refused to
26 follow or sign the Agreement forcing Mother to lodge the Decree and file an Order to Show
27 Cause. **See Exhibit AY.** The court signed the Decree on November 9, 2011. **See Exhibit**
28 **AZ; see Exhibit O ¶ 44.**

102. Less than a year later, on his own initiative, Father abandoned his children and voluntarily terminated his parental rights. **See Exhibit BA; Exhibit O ¶¶ 45-47.** When he relinquished the children's belongings to Mother, she found that he had urinated on them and threw them into a trash bin. Father's last known whereabouts was his native country of Turkey; he has not had any contact with the boys since September 2022. **See Exhibit O ¶¶ 48-49.**

103. Plaintiffs' expert on standard of care for DCS case managers and supervisors has opined in writing and at deposition that Bell's and Temple's conduct in the Kaharman case fell below the applicable standard of care. **Exhibit Q; Exhibit X.** He also testified that he was not asked to opine on any juvenile court orders, and he had not done so in his report. **Exhibit Q; Exhibit X.**

RESPECTFULLY SUBMITTED this 25th day of February 2025.

MILLS + WOODS LAW PLLC

By /s/ Thomas A. Connelly
 Thomas A. Connelly
 Robert T. Mills
 Sean A. Woods
 5055 North 12th Street, Suite 101
 Phoenix, AZ 85014

GILLESPIE, SHIELDS & TAYLOR

DeeAn Gillespie Strub
 Jenny D. Jansch
 7319 North 16th Street
 Phoenix, AZ 85020

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2025, I electronically transmitted the foregoing document to be filed electronically with the Clerk's Office through the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to be served on all counsel of record via the court's CM/ECF system.

/s/ Thomas A. Connelly

TABLE OF EXHIBITS
PLAINTIFFS' CONTROVERTING STATEMENT OF FACTS

Exhibit	Description
A	Emails re: Placement for KK
B	INTENTIONALLY OMITTED
C	Deposition Transcript of Sarah Kramer
D	Letter from Dr. Jensen re: Mold Testing
E	Deposition Transcript of Dr. Stewart
F	Medical Records – Dr. Jensen
G	DCS CSRA – UNDER SEAL
H	Text Messages between parents re: food for KK
I	INTENTIONALLY OMITTED
J	Text Message with DDD worker Schmidt re: Wheelchairs and Reactions
K	Declaration of Dr. McCants
L	Expert Report of Dr. Newberger
M	Emails between CASA and DCS re Placement Issues
N	DCS Case Build – UNDER SEAL
O	Declaration of Jessica Kahraman
P	Expert Report of Dr. Gray
Q	Expert Report of Timothy Turner
R	Expert Report of Princess Lucas-Wilson
S	DCS Training – IV-E Funding – UNDER SEAL
T	Email from Bell re: This is a FDIA Case
U	DCS Email re: Mother is “looney”
V	Medical Records – DK
W	Email re: Madison Bell Asking to Work Case
X	Deposition Transcript of Timothy Turner
Y	Growth Chart – KK
Z	Growth Chart – DK
AA	Dr. Oakley’s Psychological Evaluation of Mother – 1 st Report
AB	Dr. Oakley’s Psychological Evaluation of Mother – 2 nd Report
AC	Deposition Transcript of Madison Bell
AD	DCS Email re Hire Dr. Kelly for FDIA Cases
AE	DCS Email re Dr. Kelly Hired for this Case
AF	State Funds paid to Dr. Kelly – UNDER SEAL
AG	State funds paid to Dr. Kelly – UNDER SEAL
AH	Mold Report for Family Home
AI	Letter from Mother’s Doctor re: Mold Exposure
AJ	Mother’s Email to Bell re: Misrepresenting her words

AK	Dr. Korsten Notes re: Bell Misrepresenting Dr. Rodriguez's words
AL	DCS Case Notes and Communications – UNDER SEAL
AM	Email from DCS re: This is a Factitious Case
AN	Dr. Rodriguez's Notes re: Bell Changing Treating Goals
AO	Bell Changing Treatment Goals Again
AP	Email from Southwest Human Development re: ACCEPTS Model
AQ	Chart: ACCPETS Model for FDIA Treatment
AR	State Funds Made to Dr. Oakley/Stride Psychology – UNDER SEAL
AS	State Funds paid to Dr. Rodriguez/Buwalda Psychological Services – UNDER SEAL
AT	Email from Bell re: Third Set of Goals Including ACCEPTS Model
AU	Email from Bell Accusing Mother of Lying to Doctors
AV	Juvenile Court Order Dismissing Dependency
AW	Family Court Order for Unsupervised Parenting Time
AX	Minute Entry re: Binding Rule 69 Agreement for Joint Legal Decision-Making and Equal Parenting Time
AY	Notice of Lodging Decree for Dissolution of Marriage
AZ	Minute Entry re: Court Signed Decree
BA	Father's Voluntary Termination of Parental Rights to KK and DK
BB	Email from Mother to Bell re: Bringing Homemade Food to Visis
BC	Email from Father to Bell re: Immigration Help and FDIA Case
BD	Expert Report of Dr. Schroeckenstein
BE	Mother's Motion for Change of Physical Custody to Both Parents
BF	DCS's Motion for Change of Physical Custody to Father
BG	DCS's Response to Mother's Motion for Change of Physical Custody
BH	9/15/2020 Evidentiary Hearing Transcript
BI	INTENTIONALLY OMITTED
BJ	1/6/2020 Hearing Transcript